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09/476,618	12/31/1999	DAVID W KURZYNSKI	15-IS-5297(7	8075

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EXAMINER

LEROUX, ETIENNE PIERRE

ART UNIT PAPER NUMBER

2161

DATE MAILED: 12/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/476,618

Applicant(s)

KURZYNSKI ET AL.

Examiner

Etienne P LeRoux

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 45-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 45-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 1999 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 45-53 are rejected under 35 U.S.C. 102(e) as being anticipated by US Pat No 6,448,956 issued to Berman et al (hereafter Berman).

Claim 45:

Berman discloses:

- displaying a plurality of open medical images [Fig 2B, col 7, lines 1-15]
- unloading an unloaded message selected from at least one of the plurality of open medical images from the memory of the workstation [col 2, lines 4-12]
- saving display settings [inherently disclosed] of the unloaded image such that if the unloaded image is not closed and a user decides to redisplay the unloaded image, the unloaded image appears to have remained virtually open to the user as if the unloaded image had not been unloaded [col 7, lines 1-15]

Claim 46:

Berman discloses wherein the display settings are saved in the memory of the workstation [col 2, lines 38-56]

Claims 47 and 51:

Berman discloses wherein the unloaded message is transferred to a storage device connected to the workstation by a network [col 2, lines 23-25].

Claim 48:

Berman discloses a method for managing a memory in a workstation when a size of user selected medical image files exceeds the memory capacity in the workstation, the method comprising the steps of:

opening a plurality of medical image files to display a plurality of medical images; prioritizing the plurality of medical image files using a prioritization scheme having at least three levels including a first level comprising a currently viewed medical image; a second level comprising medical images in a viewing stack; and a third level comprising medical images related to medical images with a higher priority; wherein the medical images from the first level are designated with a higher priority than the medical images of the second level and the medical images of the second level are designated with a higher priority than the medical images of the third level; and unloading from the memory of the workstation a medical image file having a lower priority than at least one of the open medical image files stored in memory, wherein the unloaded medical image file includes at least a portion of at least one of the open medical images [Fig 2B].

Claims 49 and 53:

Berman discloses wherein the third level only comprises open medical images related to open medical images from the first level [Fig 2B, col 3, lines 45-63].

Claim 50:

Berman discloses further comprising the step of saving the visual display settings of the unloaded medical image file such that if the unloaded medical image file is not closed and a user

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decides to redisplay the unloaded image file, the unloaded medical image file appears virtually open to the user and as if the unloaded medical image file had not been unloaded [col 6, lines 40-50]

Claim 52:

Berman discloses a system for managing memory in a workstation when a size of user selected medical image file exceeds the memory capacity in the workstation, the system comprising: a processor configured to prioritize the user selected medical image file using a prioritization scheme having at least three levels including a first level comprising a current viewed medical image; a second level comprising medical images in a viewing stack; and a third level comprising medical images related to medical images with a higher priority; wherein the medical images from the first level are designated with a higher priority than the medical images of the second level and the medical images of the second level are designated with a higher priority than the medical images of the third level; and the memory configured to unload an unload medical image file having a lower priority than at least one of the user selected medical image files stored in memory, wherein the unload medical image file includes at least a portion of at least one of the user selected medical image files and wherein the processor is coupled to the memory [Fig 2B].

Response to Arguments

Applicant's arguments filed 8/16/2004 have been fully considered but they are not persuasive.

Applicant Argues:

Applicant states in the first paragraph on page 6 "There is no teaching of a method for managing memory in a workstation when a size of user selected files exceeds the memory

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capacity in the workstation, just as there is no teaching of the step of unloading an image selected from at least one of a plurality of open images from the memory of a workstation.”

Examiner Responds:

Examiner is not persuaded. MPEP § 2111.02 states "If the claim preamble, when read in the context of the entire claim, recites limitations of the claim, or, if the claim preamble is necessary to give life, meaning, and vitality to the claim, then the claim preamble should be construed as if in the balance of the claim." In claim 45, the preamble is not required to provide meaning to the claim because the body of the claim does not further limit a memory management method. There is nothing in the body of claim 45 which suggests a memory management method. The preamble is thus not given patentable weight.

Furthermore, turning to applicant's argument regarding unloading an image file selected from at least one of the plurality of open medical images from the memory of the workstation. Berman discloses in Figure 5, column 10, lines 39-50, the unloading of images A-H on monitors 1 and 2 and uploading images I-P on monitors 1 and 2.

Applicant Argues:

Applicant states in the second paragraph on page 6 "In addition, Berman et al '956 failed to teach or suggest the step of saving display settings of the unloaded image such that if the unloaded image is not closed and the user decides to redisplay the unloaded image, the unloaded image appears to have remained virtually open to the user and as if the unloaded image had not been unloaded.”

Examiner Responds:

Examiner is not persuaded. Examiner notes Rule 37CFR 1.111(b) requires Applicant to "distinctly and specifically point out errors" in the examiner's action. Also, arguments or conclusions of Applicant cannot take the place of evidence. *In re Cole*, 51 CCPA 919, 326F.2d

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769, 140 USPQ 230 (1964). Furthermore, the claims are interpreted in light of the specification but limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Examiner has referred to Applicant's specification on pages 6 and 7 and Figure 2 and finds multiple instances of a tile-like formation across a display in a stack mode i.e., stacked one behind another like a stack of cards. Applicant's specification discloses stack management for displaying image files and so does Berman [col 7, lines 1-15]. Examiner maintains Berman's disclosure in Figures 2A and 2B does in fact read on instant claim 45 limitation. Applicant cannot simply make the statement that Berman does not disclose the limitation without providing reasons with due reference to the specification why Berman does not read on the claim 45 limitation under consideration.

Applicant Argues:

Applicant states in the second paragraph on page 7 "Nowhere is there taught the steps of opening a plurality of medial image files to display the plurality of medical images, prioritizing the plurality of medical image files using a prioritization scheme, and unloading from the memory of the workstation a medical image files having a lower priority than at least one of the open medical image files in memory."

Examiner Responds:

Examiner is not persuaded. Examiner maintains the following disclosure, Figure 5 and column 10, lines 38-65, by Berman reads on above limitation:

With multiple monitor configurations, as shown in FIG. 5, images not capable of being displayed on the first monitor 10A will be displayed from top left to right and in rows on a second monitor 10B. By placing the cursor 20 in the left or right 20% border regions of any image and clicking the left mouse button 321, the system will replace the images on both monitors starting with the next un-displayed image. For example, the initial display as shown in FIG. 5 is capable of showing only the first eight images A through H of the sixteen image set A through P. Accordingly, the right border region is used to increment the display to show the remaining images I through P.

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Berman teaches that a sequence of image displays can be removed from monitor 1 and monitor 2. The images A-H have an initial higher priority and thus are initially displayed. The prioritization of images A-H is then changed and images A-H are unloaded. The prioritization of images I-P are then given a high priority and thus images I-P are displayed on monitors 1 and 2.

Applicant Argues:

Applicant states in the third paragraph on page 7 “Berman et al ‘956 fails to teach a prioritization scheme having at least three levels including a first level comprising a currently viewed medical image, a second level comprising medical images in a viewing stack, and a third level comprising medical images related to medical images with a higher priority.”

Examiner Responds:

Examiner is not persuaded. Berman teaches in Figures 5, 6A and 6B that images can be viewed and also prioritized by priority in a stack. Figure 6A shows that in the first priority Monitor 1 displays images in stack a and stack B and monitor 2 displays images in stack C and stack D. The prioritization is then changed, refer Figure 6B, such that monitor 1 displays images in Stack A, stack B, stack C and stack D and monitor 2 displays images in stack E, stack F and stack G. The images displayed per Figure 6A thus represent the first level, the second level is represented by stack F and stack G in figure 6B and the third level is images not shown in figures 6A and 6B. In this regard, applicant is referred to Berman’s Figure 10 which teaches there can be a plurality of images in windows 1 through n.

Applicant Argues:

Applicant restates the same argument as above with reference to claim 52.

Examiner Responds:

Examiner is not persuaded. applicant is referred to supra response by examiner.

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Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Etienne LeRoux whose telephone number is (703) 305-0620.

The examiner can normally be reached on Monday – Friday from 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic, can be reached on (703) 308-1436.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Etienne LeRoux

December 15, 2004


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